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No. 91-363

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

OLD SECOND NATIONAL BANK, as Trustee under the provisions of a Trust Agreement known as Trust No. 2691; et al.,

Petitioners,

v.

CITY OF AURORA, a municipal corporation,

Respondent.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

LEO N. CINQUINO
Counsel of Record
SANDRA L. HEBENSTREIT
RIGHEIMER MARTIN & CINQUINO P.C.
135 South LaSalle Street
Chicago, Illinois 60603
(312) 726-5646

RONALD R. MOSES
City of Aurora Law Department
44 East Downer Place
Aurora, Illinois 60505

Attorneys for Respondent

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

QUESTIONS PRESENTED

1. Whether this Court should deny petition for writ of certiorari because no Federal constitutional issue was presented for review to the Supreme Court of Illinois and an error not assigned is not open to review.

2. Whether this Court should deny petition for writ of certiorari because, even if Federal constitutional issues are not waived, any Federal questions raised by petitioners are insubstantial issues that have long been settled by the Illinois Supreme Court and the United States Supreme Court. In any event, the order filed by the Illinois Appellate Court is not published and is not precedential. This case has limited application.

3. Whether this Court should deny petition for writ of certiorari because all questions raised by petitioners were decided on independent and adequate state grounds.

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RESPONDENT'S BRIEF IN OPPOSITION

PRAYER

The City of Aurora asks this Court to deny the Petition for Writ of Certiorari to review the judgment and order of the Appellate Court of Illinois, Second District, entered March 1, 1991. No Federal constitutional issue was presented for review to the Supreme Court of Illinois, the highest state court in which a decision be had. No jurisdiction exists under 28 U.S.C. § 1257. No Federal ques-

tions are even raised in the instant petition and, even if raised, petitioners' "Federal questions" are insubstantial, and/or have been decided, on independent and adequate state grounds.

OPINION BELOW

The opinion below is cited as *City of Aurora vs. Old Second National Bank, as Trustee under the provisions of a Trust Agreement known as Trust No. 2691, et al.*, No. 2-90-0421 (2nd Dist. 3/1/91).

This is an unpublished opinion pursuant to Illinois Supreme Court Rule 23 (*Ill. Rev. Stat.* 1989, ch. 110A, § 23). Rule 23 provides for disposal of cases by written order rather than by opinion where the majority of the panel deciding the case determines that the case poses no important new legal issues, and does not modify or question existing rules of law; does not involve a conflict of authority within the Appellate Court; does not involve substantial public interest; does not constitute a significant contribution to legal literature; and no concurring or dissenting opinion is proposed to be filed. This order is not precedential. A copy of the opinion is included in petitioners' appendix. Petitioners' petition for leave to appeal to the Illinois Supreme Court was denied.

STATEMENT OF THE CASE

Petitioners have presented a statement of facts which is incomplete.

Further, petitioners' statement of the case does not comply with the requirements of Supreme Court Rule 14.1(h), as petitioners do not specify the manner in which they allegedly raised Federal questions in the state trial court, the Appellate Court, or the Illinois Supreme Court, or the way in which they were passed upon by those courts. Petitioners have failed to show that any Federal questions were raised timely or properly so as to give this Court jurisdiction to review the state court judgment on a writ of certiorari. Under Supreme Court Rule 14.5, petitioners' failure to meet these requirements is a sufficient reason to deny the instant petition, and this petition should be denied.

A. THE UNDERLYING EMINENT DOMAIN PROCEEDINGS

On October 24, 1988, the City of Aurora filed eminent domain proceedings to acquire an abandoned hotel as part of its redevelopment plan under the Tax Increment Financing Act (*Ill. Rev. Stat.* 1989, ch. 24, § 11-74.4-1 *et seq.*), which authorizes municipalities to acquire blighted properties.

The subject property was known as the Aurora Hotel, a 60,000 square foot, eight story building, located in Aurora, Illinois.

In 1978, one of the petitioners purchased an interest in the subject property and the operating business located thereon. In 1978, the property was in reasonable operating

condition, with operational plumbing, electric, and heat (C-713-714, C-888). During the next six years, the condition of the property changed dramatically. The subject property was tagged unfit for human habitation in 1979 (C-718-719); found unfit for human habitation because of no heat and water in 1982 (C-727); cited for building code violations; and was finally closed by the state fire marshal in September 1984 (C-732). The fire marshal's order was upheld in court (C-732). On the date of value (October 24, 1988), the subject property could not be operated as a hotel. Dead pigeons and rodents were visible in the property (C-423). There were numerous building code violations, including open elevator shafts, insufficient stairways, and plumbing violations (C-431). Between September 1984, and October 1988, the subject property remained unoccupied.

B. TRIAL ON TRAVERSE AND MOTION TO DISMISS

Prior to filing this eminent domain proceeding, the Aurora City Council passed a series of ordinances and, pursuant to the Illinois Tax Increment Financing Act (hereinafter "TIF Act") (*Ill. Rev. Stat.* 1989, ch. 24, § 11-74.4-1, *et seq.*), established a tax increment financing district, which included the subject property. At trial of the traverse, the City made its *prima facie* case by admitting certified copies of several ordinances passed by Aurora (City's Exhibit #1 through #4), which incorporated specific findings that the redevelopment area, which included petitioners' abandoned hotel, satisfied the statutory criteria for a conservation area, because more than 50% of the structures in the area were 35 years of age or more, and the following statutory criteria were present: (1) deterioration; (2) obsolescence; (3) structures below minimum code; (4) excessive vacancies or abandonment; (5) inadequate utilities; (6) deleterious land use or layout; and (7) lack of communi-

ty planning. The City also presented the expert testimony of Robert Teska who has personally studied and evaluated the subject property and subject redevelopment, and who has had extensive experience in the area of urban redevelopment. The redevelopment plan and project for the City of Aurora had been prepared by Teska Associates, Inc.

Petitioners also offered testimony in rebuttal. However, petitioners' own witness, Theodore Johnson, admitted that he agreed for the most part with the definitions related to blight, which had been utilized by Aurora in its redevelopment plan (C-127).

Johnson also found that nine city blocks qualified for redevelopment under his own analysis (C-169). The subject property was within this area.

On cross examination, another of petitioners' experts, Randall Pros, admitted government activity was necessary for redevelopment of the subject area (C-237-238). Pros also testified that he considered the TIF a benefit to downtown Aurora (C-234).

The trial court denied the traverse and motion to dismiss and ruled as follows:

> "The city made its *prima facie* case and the statutory requirements giving rise to the exercise of the power of eminent domain are satisfied. Strict compliance has been accomplished.
>
> "The actions of the city and the necessity of the taking are amply supported by the evidence." (See petitioners' appendix at 17.)

C. JURY TRIAL

Final just compensation was awarded by full jury trial. At trial, petitioners themselves (although non-experts)

were allowed to testify to their opinions of value for the subject property. Pursuant to the City's motion in limine, petitioners were barred from offering any testimony regarding their 1978 purchase price of the subject site, which had occurred when the property was an operating hotel.

Petitioners were also allowed to testify to their opinions of highest and best use as a "suites hotel". Petitioners were not permitted to testify as to possible future income assuming the hotel were to be reconstructed, respondent having objected that admission of such speculative and conjectural testimony would be reversible error under Illinois law. Petitioners were also barred from testifying as to an appraisal of the neighboring and operational Leland Hotel based on respondent's objection that this lacked any relevance and any foundation. The actual sale of the Leland Hotel was admitted into evidence.

D. THE STATE COURT APPEAL

On appeal to the Illinois Appellate Court, petitioners asserted that the TIF Act was unconstitutionally vague in its definitions of "blight and conservation area", thereby violating due process requirements of notice under both the State and Federal Constitutions. Petitioners also asserted on appeal that the trial court had erred in its evidentiary rulings: (a) that petitioners had failed to rebut the City's *prima facie* case establishing the necessity of the taking; (b) that evidence of the petitioners' 10 year old purchase price was improperly excluded; (c) that testimony related to possible future income assuming reconstruction of the subject property was improperly excluded; and (d) that exclusion of evidence relating to an appraisal of the neighboring Leland Hotel was error. All evidentiary objections raised by petitioners on appeal were based

on Illinois state law. No Federal constitutional provision, statute, or case law, was cited or argued by petitioners with reference to these evidentiary questions. Petitioners at no time raised any equal protection argument under the Fifth Amendment while this case was pending before any state or Federal court. (Petitioners' statement of issues raised in the State Appellate Court is included in the appendix to this brief.)

The Illinois Appellate Court rejected petitioners' assertion that the TIF Act was unconstitutionally vague, citing Illinois Supreme Court precedent, *People ex rel. Canton vs. Crouch*, 79 Ill.2d 356, 403 N.E.2d 242, 250 (1980), on that specific point. The Illinois Appellate Court further held that the evidentiary rulings of the trial court barring testimony as to possible future income of the hotel if reconstructed, and appraisal of the neighboring Leland Hotel, had been waived under Illinois law as a result of petitioners' failure to address these issues in their post-trial motion. The remaining evidentiary rulings were affirmed as consistent with Illinois law. Nowhere in the entire Appellate Court opinion is there any discussion of, or citation to, the Federal Constitution, Federal statute, or Federal case law.

The petition for leave to appeal to the Illinois Supreme Court filed by petitioners did not challenge the constitutionality of the TIF Act under the State or Federal Constitutions; did not cite a single Federal question or statute; and raised no Federal question whatever. (Petitioners' statement of points relied upon for reversal contained in their petition for leave to appeal to the Illinois Supreme Court is included in the appendix to this brief.)

REASONS FOR DENYING THE WRIT OF CERTIORARI

A. SUMMARY OF ARGUMENT

Because petitioners have not properly raised a Federal question, jurisdiction does not exist under 28 U.S.C. § 1257, and the instant petition must be denied. Even if a Federal question could somehow be sustained based on the record below, petitioners allege no conflict among different state and Federal jurisdictions, and offer no special or important reason to have this case heard on a petition for writ of certiorari, as required by Supreme Court Rules 10 and 14.1(j). Consistent with Supreme Court Rule 14.5, this petition should be denied.

It is clear that the Illinois Appellate Court did not deem the issues presented to it to be important by issuing an order which is not precedential. The Illinois Supreme Court denied petitioners' leave to appeal. In substance, the instant petition for writ of certiorari improperly requests this Court to review evidentiary rulings of the state trial court, which were decided under state law, and which do not involve Federal questions.

Although petitioners purport to raise a question as to the constitutionality of the TIF Act (*Ill. Rev. Stat.* 1989, ch. 24, § 11-74.4-1 *et seq.* (particularly § 11-74.4-3 definitions)), they did not seek review of this question before the Illinois Supreme Court, the highest state court in which a decision could be had. Further, even if the constitutionality of the TIF Act were before this Court, it is an insubstantial question, which the Illinois Appellate Court correctly decided, consistent with long-established precedent of the Illinois Supreme Court and in accord with applicable decisions of the U.S. Supreme Court.

B. JURISDICTION UNDER 28 U.S.C. § 1257 DOES NOT EXIST BECAUSE PETITIONERS HAVE FAILED TO SEEK REVIEW OF ANY FEDERAL QUESTION BY THE HIGHEST STATE COURT

Under 28 U.S.C. § 1257, petitioners are required to exhaust all opportunities for review by the highest state court before invoking jurisdiction under 28 U.S.C. § 1257. *Banks vs. California*, 395 U.S. 708 (1969). The only question raised by petitioners in the state court proceedings which could possibly be construed as a Federal question is the issue of whether the TIF Act is too vague to meet the due process requirements of notice. This question was raised in a cursory manner by petitioners in their Appellate Court pleadings. (See appendix.) In the state court, respondent argued that petitioners' presentation of this constitutional question was insufficient under the State Civil Practice Act, but the court ruled that it had discretion to address the argument notwithstanding insufficient presentation, citing *Department of Conservation vs. First National Bank*, 36 Ill.App.3d 495, 344 N.E.2d 11, 19 (2nd Dist. 1976). The Appellate Court further held that the TIF Act was not unconstitutionally vague, citing Illinois Supreme Court precedent on this precise point, *People ex rel. Canton vs. Crouch*, 79 Ill.2d 356, 403 N.E.2d 242, 250 (1980).

In their petition for leave to appeal to the Illinois Supreme Court, petitioners did not include any point for review related to the Appellate Court's ruling that the TIF Act is constitutional. (See appendix at 2a-3a.) Consequently, no Federal question was preserved by petitioners in their petition for leave to appeal to the Illinois Supreme Court, and no basis for jurisdiction under 28 U.S.C. § 1257 exists. *Charleston Federal Savings & Loan Assoc. vs. Alderson*, 324 U.S. 182, 185-86 (1944). Rules of the Illinois Supreme Court (Rule 315(b)(3), *Ill. Rev. Stat.* 1989, ch.

110A, § 315(b)(3)) require that a petition for leave to appeal shall contain a statement of the points relied upon for reversal of the judgment of the Appellate Court. Petitioners' failure to include the constitutionality of the TIF Act as a point for reversal is a failure to bring this issue before the highest state court in which review may be had. *Deal vs. Byford*, 127 Ill.2d 192, 537 N.E.2d 267, 270 (1989); *Dineen vs. City of Chicago*, 125 Ill.2d 248, 531 N.E.2d 347, 354 (1988). Consequently, jurisdiction does not exist under 28 U.S.C. § 1257. An error not assigned is not open to review. *Hulbert vs. City of Chicago*, 202 U.S. 275 (1906); *Connecticut Mutual Life Insurance Co. vs. Moore*, 333 U.S. 541, 544 (1948).

Failure to present a Federal question in conformance with state procedure will preclude review by the United States Supreme Court. *Street vs. New York*, 394 U.S. 576 (1969); *Wainwright vs. Sykes*, 433 U.S. 82 (1977); *Webb vs. Webb*, 451 U.S. 493 (1981). The instant petition for writ of certiorari should be denied for want of Supreme Court jurisdiction.

C. EVEN ASSUMING ARGUENDO THAT A FEDERAL QUESTION IS RAISED, IT IS NOT A SUBSTANTIAL QUESTION AND WRIT OF CERTIORARI SHOULD BE DENIED

Even if petitioners' failure to bring any Federal question before the Illinois Supreme Court does not preclude this court's consideration of petitioners' claim that the TIF Act is unconstitutionally vague, the constitutionality of this Act is well settled under state and Federal law, and the issue is, therefore, not substantial. Supreme Court review of state court decisions is limited to cases which raise substantial, not frivolous, questions. *Palmer Oil Corp. vs. Amerada Petroleum Corp.*, 343 U.S. 390 (1952); *Patterson vs. Stanolind Oil & Gas Co.*, 305 U.S. 376 (1939).

The Illinois Supreme Court has found the TIF Act constitutional. *People ex rel. City of Canton vs. Crouch*, 79 Ill.2d 356, 403 N.E.2d 242 (1980). The *Canton* court upheld the TIF Act against a variety of constitutional challenges, including the argument that provisions in the Act were too vague, indefinite, or uncertain, to meet the requirements of due process. *Canton*, 403 N.E.2d at 250. The *Canton* court also held that the Eminent Domain Act was the appropriate means to accomplish the elimination of blight, citing a long line of Illinois Supreme Court cases upholding the general powers of the municipality to utilize eminent domain in eliminating and preventing urban blight.

The foundational case for legislative redevelopment is *Berman vs. Parker*, 348 U.S. 26 (1954). In *Berman*, the Supreme Court held that a redevelopment plan in the District of Columbia in order to eliminate blight was for a proper public purpose, even where the property owner alleged that his property was commercial and not residential property or slum housing. The court further held that, in cases where the public interest is in question, the legislature will determine and set guidelines for what is a proper public purpose and what will best serve the public needs. The judiciary will not be involved in such decisions unless there is a clear abuse of discretion. *Berman*, 348 U.S. at 32.

More recently, the United States Supreme Court has upheld and reaffirmed its decision in *Berman*. *Hawaii Housing Authority vs. Midkiff*, 467 U.S. 229 (1984). In reaching its decision, the Supreme Court stressed the importance of judicial deference to the legislative decision about what constitutes a public use, stating:

> "When the legislature's purpose is legitimate and its means are not irrational, . . . empirical debates over the wisdom of takings—no less than debates over the

> wisdom of other kinds of socioeconomic legislation—are not to be carried out in the Federal Courts. . . . *Hawaii Housing Authority*, 467 U.S. at 243.
>
> "Similarly, the fact that a state legislature, and not the Congress, made the public use determination does not mean that judicial deference is less appropriate. Judicial deference is required because, in our system of government, legislatures are better able to assess what public purposes should be advanced by an exercise of the taking power. State legislatures are as capable as Congress of making such determinations within their respective spheres of authority. *See Berman vs. Parker*, 348 U.S. at 32, 99 L.Ed. 27, 75 S.Ct. 98." *Hawaii Housing Authority*, 467 U.S. at 244.

In support of their contention that the TIF Act fails to define with any reasonable degree of certainty what constitutes a "conservation area", petitioners cite *Grayned vs. City of Rockford*, 408 U.S. 104, 108 (1972). In this case, the United States Supreme Court ruled that an anti-noise ordinance enacted by the City of Rockford, Illinois, was *not* unconstitutionally vague and met constitutional requirements of fair notice. The ordinance provided in relevant part:

> "[N]o person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof . . . ." *Grayned*, 408 U.S. at 108.

The holding in *Grayned* supports the constitutionality of the TIF Act and makes clear that petitioners' request for review by this Court is a frivolous request.

Petitioners also cite *City of Wheaton vs. Sandberg*, 215 Ill.App.3d 220, 574 N.E.2d 697 (2nd Dist. 1991), and in-

correctly imply that this case is in conflict with the state court's rulings in the instant case. In discussing *Sandberg*, petitioners fail to note that the court actually *reiterated* the constitutionality of the TIF Act. In *Sandberg*, the Appellate Court held that a home rule ordinance enacted by the City of Wheaton authorizing the city to condemn property which it determined to be in need of redevelopment was unconstitutionally and unreasonably vague. 597 N.E. 2d at 702. The Wheaton home rule ordinance permitted the city to make a determination of blight based solely on "vacancies in all or part of any building." *Id.* at 702. Wheaton's home rule ordinance was held to be unconstitutionally vague precisely because its criteria for redevelopment and definitions of blight lacked the specificity which the TIF Act contains. The court cited the very language of the TIF Act, which petitioners attack as unconstitutionally vague, as an example of statutory language which meets all constitutional requirements of certainty and specificity. 597 N.E.2d at 700-701.

Petitioners' own case citations demonstrate conclusively that the Federal question which they attempt to raise is an insubstantial question. The constitutionality of the TIF Act has been specifically settled by prior court pronouncements, which foreclose further argument on the subject. *Equitable Life Assurance Society vs. Brown*, 187 U.S. 308, 311 (1902).

Even assuming arguendo that petitioners have properly raised and preserved on appeal the question of whether the TIF Act is constitutional, the constitutionality of the Act is well settled by precedent. Petitioners have failed to raise any real substantive, or meritorious Federal question, and their petition for writ for certiorari should be denied.

D. THE ISSUES RAISED BY PETITIONERS ARE EVIDENTIARY QUESTIONS WHICH HAVE BEEN DECIDED ON INDEPENDENT AND ADEQUATE STATE GROUNDS AND WRIT OF CERTIORARI SHOULD BE DENIED

Petitioners themselves appear to concede that the evidentiary rulings of the trial court, which they claim have denied them due process and just compensation, are governed by state law. The petition for writ of certiorari (pg. 9) states: "The outrageously low verdict was the product of erroneous evidentiary rulings by the trial court."

The unpublished, non-precedential order of the Illinois Appellate Court correctly decided the following evidentiary questions under state law:

(a) Exclusion of the 10 year old purchase price was not an abuse of the trial court's discretion considering the lapse of time, the substantial deterioration and abandonment of the hotel structure, and the testimony concerning the surrounding area (*Illinois State Toll Highway Authority vs. Grand Mandarin Restaurant*, 189 Ill.App.3d 355, 544 N.E.2d 1145, 1149-50 (2nd Dist. 1989));

(b) Any error in the exclusion of possible future income assuming the property could be reconstructed for use as a suites hotel, or exclusion of the appraisal and financing evidence relating to the neighboring Leland Hotel, was waived by petitioners as these issues were not presented in defendants' post-trial motion (citing 134 Ill.2d, R. 366(b)(2)(iii); *Village of Arlington Heights vs. National Bank of Austin*, 53 Ill. App.3d 917, 369 N.E.2d 502, 504-05 (1st Dist. 1977));

(c) The City of Aurora proved its compliance with the TIF Act. By introducing its validly enacted ordinances, the City sufficiently presented *prima facie* evidence that the area at issue met the criteria of a "conservation area" under the TIF Act. The

> burden of proof then shifted to petitioners, who completely failed to offer any meaningful rebuttal to the City's *prima facie* case (*Trustees of Schools vs. First National Bank of Blue Island*, 49 Ill.2d 408, 274 N.E.2d 56, 60 (1971)). As stated in the Appellate Court opinion at page 10: "To attack that *prima facie* case, the defendants relied upon expert witnesses with conclusory analyses based on limited personal knowledge of the planned redevelopment area. In contrast to the detailed and responsive rebuttal testimony of Mr. Teska, the defendants' testimony challenging the contents of the Teska study was of limited persuasiveness. We find no reason to disturb the court's findings." (Petitioners' appendix at 10.)

Neither Federal constitutional provisions, nor Federal case law, were cited anywhere in the Appellate Court opinion *or* in petitioners' application for leave to appeal to the Illinois Supreme Court. Clearly, the evidentiary rulings of the trial court were based on state law and in no way involved Federal constitutional issues or other Federal questions. The Appellate Court correctly applied settled Illinois case law in affirming the evidentiary rulings of the trial court.

Further, petitioners identify as a question to be reviewed by this Court the issue of whether they "were denied 'just compensation' as required under the Fifth Amendment and 'due process' and 'equal protection' as provided under the Fourteenth Amendment (1) when they were denied the opportunity to testify as to the value of their property. . . .". The question as framed is a misrepresentation of the state court proceedings in which petitioners, even though not qualified as experts, *were allowed* to testify as to their opinions of value. (C-944, 962; R-710-799, 845.) This is also the first time petitioners have ever asserted any violation of equal protection, and this issue can-

not be raised for the first time on a petition for writ of certiorari. *Cardinale vs. Louisiana*, 394 U.S. 437 (1969). (See appendix for issues raised by petitioners in state court.)

But, even assuming arguendo, that mistakes were made by the trial court in its evidentiary rulings, this does not amount to a denial of constitutional immunities and does not make a case under the Fourteenth Amendment. *Dohany vs. Rogers*, 281 U.S. 362, 369 (1930).

In *Roberts vs. New York*, 295 U.S. 264 (1935), a condemnation proceeding, this court pointed out that not every mistake of a court in ruling on evidence amounts to a denial of constitutional immunities, although the outcome is to give the owner less than he ought to have.

> "Enough for present purposes that when the hearing has been full and candid, there must ordinarily be a showing of something more far-reaching than one of dubious mistake in the appraisal of evidence. Due process is a growth too sturdy to succumb to the infection of the least ingredient of error. 'It takes more than a possible misconstruction by a court to make a case under the Fourteenth Amendment.' " 295 U.S. 278.

If it can be said that petitioners are relying upon due process, then the answer to that is that all that is essential for due process in condemnation cases "is that in some appropriate way, before some properly constituted tribunal, inquiry shall be made as to the amount of compensation, and when this has been provided there is that due process which is required by the Federal Constitution." *A. Backus, Jr. & Sons vs. Fort Street Union Depot Co.*, 169 U.S. 557, 559 (1898).

In *McGovern vs. New York*, 229 U.S. 363, 371 (1913), Mr. Justice Holmes stated:

> "As it is put in the case most frequently cited in favor of the right to a writ of error, 'we are permitted only to inquire whether the trial court prescribed any rule for the guidance of the jury that was in absolute disregard of the company's right to just compensation.'

and again,

> "The final judgment of a state court 'ought not to be held in violation of the due process of law enjoined by the 14th Amendment unless by the rulings upon questions of law the company was prevented from obtaining substantially any compensation.' "

The complete facts as herein set forth demonstrate completely that the petitioners were not denied due process or just compensation.

CONCLUSION

Petitioners failed to raise the constitutionality of the TIF Act or any other Federal question for review by the highest state court. Consequently, the jurisdictional requirements of 28 U.S.C. § 1257 are not met, and this petition for writ of certiorari should be denied. Petitioners have failed to raise any substantial Federal question at any stage of the state court proceedings as the constitutionality of the TIF Act is well settled under state and Federal precedent, and this petition for writ of certiorari should be denied. Petitioners' allegation that they were denied just compensation as a result of evidentiary rulings of the state court does not raise a Federal question. Rulings of the state court, in denying a 10 year old purchase price, and in requiring petitioners to meet their burden of proof with factual evidence, and refusing to hear issues

waived by petitioners, are correct under Illinois, and are based on independent and adequate state grounds. Petitioners have been afforded due process and have received just compensation. The petition for writ of certiorari should be denied.

Respectfully submitted,

LEO N. CINQUINO
Counsel of Record
SANDRA L. HEBENSTREIT
RIGHEIMER MARTIN & CINQUINO P.C.
135 South LaSalle Street
Chicago, Illinois 60603
(312) 726-5646

RONALD R. MOSES
City of Aurora Law Department
44 East Downer Place
Aurora, Illinois 60505

Attorneys for Respondent

APPENDIX

The following issues were presented for review by appellants (petitioners herein) before the Illinois Appellate Court, Second District. (Appellants' brief before the Appellate Court, Second District, of Illinois at iii.)

"ISSUES PRESENTED FOR REVIEW

"I. WHETHER THE "T.I.F." STATUTE IS UNCONSTITUTIONAL.

"II. WHETHER ASSUMING ARGUENDO, THE "T.I.F" STATUTE IS CONSTITUTIONAL THE PLAINTIFF FAILED TO MEET THE ISSUES RAISED BY THE TRAVERSE AND PROPERLY PROVE COMPLIANCE WITH T.I.F.'S REQUIREMENTS OR REFUTE DEFENDANTS EVIDENCE AND THEREFORE THE COURTS FINDINGS WERE ERRONEOUS AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

"III. WHETHER THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IMPROPERLY CHOKING OFF DEFENDANTS DEFENSE BY EXCLUDING TESTIMONY AND EVIDENCE OF PRIOR SALE OF THE SUBJECT PROPERTY TOGETHER WITH THE BASIS OF DEFENDANTS VALUATION WITNESSES RESTRICTING HIS TESTIMONY.

"IV. WHETHER APPELLEE'S ACTION SHOULD HAVE BEEN DISMISSED FOR FAILURE TO STATE OR PROVE A CAUSE OF ACTION."

The following issues were presented for review by appellants (petitioners herein) before the Illinois Supreme Court. (Appellants' brief before the Supreme Court of Illinois at 2-3.)

"POINTS RELIED UPON FOR REVERSAL

"1. The Appellate Court by relying on *People ex rel. Canton vs. Crouch*, 79 Ill.2d 356, 403 N.E.2d 242, 250 (1980), failed to recognize the line of cases that have held that Eminent Domain statutes are to be strictly construed to protect the property rights of the land owner. *County of Kane vs. Elmhurst National Bank*, 111 Ill.App.3d 292, 443 N.E.2d 1149 (1982); *Department of Public Works & Buildings vs. Keller*, 61 Ill.2d 320, 335 N.E.2d 443 (1975); *Illinois Cities Water Company vs. City of Mount Vernon*, 11 Ill.2d 547, 144 N.E.2d 729 (1957), and that 'in order for a statute to be held valid the duty imposed by it must be prescribed in terms definite enough to serve as a guide to those who have the duty imposed upon them.' *Vallat vs. Radium Dial*, 360 Ill. 407, 196 N.E.2d 485 (1935).

"The City's confiscatory actions were unconstitutionally vague and as a result, baffled not only the property owners but also the experts and in particular, the trial court. Accordingly, as shown by the facts of record, it was the City that failed to properly carry the constitutional burden not the Defendants.

"2. The Appellate Court erred in not recognizing that the Defendants showed that the City's taking of the property was not only a clear abuse of power granted to them under the T.I.F. Act but also, contrary to the legislative intent of the legislature. *Ill. Rev. Stat.* Ch. 24 par. 11-74.4-2(b). The 'Legislative finding and declaration' states in relevant part that the purpose of the such redevelopment is [*not* to

hamper or destroy but] to 'encourage private investment and restore and enhance the tax base of the taxing districts . . .'. *Id.*

"3. The Appellate Court erred in not reversing the judgment of the trial court based upon the trial court granting the City's Motion in Limine which barred Defendant Owner Howes' explanatory testimony of relevant admissible evidence regarding the value of the property. *Bradley vs. Caterpillar Tractor Co.*, 75 Ill.App.3d 890, 394 N.E.2d 825, 832 (5th Dist. 1979); and *Lundell vs. Citrario*, 129 Ill.App.3d 390, 472 N.E.2d 541, 545 (1st Dist. 1984).

"4. The Appellate Court ignored the line of cases that have allowed testimony of the cost of such property after a lapse of time. *Department of Public Works & Buildings vs. Bloomer*, 28 Ill.2d 267, 191 N.E.2d 245 (1963); *Department of Public Works & Buildings vs. Gieseking*, 108 Ill.App.2d 105, 246 N.E.2d 707 (5th Dist. 1969); and *Forest Preserve District vs. Keen*, 298 Ill. 37, 131 N.E. 117 (1921); *Benham vs. Dunbar*, 103 Mass. 365 (1869)."